



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R07-OAR-2019-0334; FRL-10000-15-Region 7]

**Air Plan Approval; Missouri; Infrastructure State Implementation
Plan Requirements for the 2015 Ozone National Ambient Air
Quality Standard**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving elements of a State Implementation Plan (SIP) revision submission from the State of Missouri addressing the applicable requirements of section 110 of the Clean Air Act (CAA) for the 2015 Ozone (O₃) National Ambient Air Quality Standard (NAAQS). Section 110 requires that each state adopt and submit a SIP revision to support the implementation, maintenance, and enforcement of each new or revised NAAQS promulgated by the EPA. These SIPs are commonly referred to as "infrastructure" SIPs. The infrastructure requirements are designed to ensure that the structural components of each state's air quality management program are adequate to meet the state's responsibilities under the CAA. The EPA is also approving a request from the State to exempt all counties in the Metropolitan Kansas City Interstate Air Quality Control Region (Kansas City AQCR) and all of

Jefferson and most of Franklin (except Boles Township) counties in the Metropolitan St. Louis Interstate (St. Louis AQCR) from needing an ozone contingency plan meeting the EPA's requirements.

DATES: This final rule is effective on **[insert date 30 days after date of publication in the Federal Register]**.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-R07-OAR-2019-0334. All documents in the docket are listed on the <https://www.regulations.gov> web site. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available through <https://www.regulations.gov> or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional information.

FOR FURTHER INFORMATION CONTACT: Tracey Casburn, Environmental Protection Agency, Region 7 Office, Air Quality and Planning Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219; telephone number (913) 551-7016; email address casburn.tracey@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document "we," "us," and "our" refer to EPA.

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I. Background

On June 25, 2019, the EPA proposed to approve the State's infrastructure SIP submittal for the 2015 O₃ NAAQS and to approve a request to exempt all counties in the Kansas City AQCR, and Jefferson and Franklin (except Bowles Township) counties in the St. Louis AQCR, from needing to meet the requirement to have an ozone contingency plan found in at 40 CFR part 51, subpart H, in the **Federal Register**.¹ See 84 FR 29826. The EPA solicited comments on the proposed SIP revisions and received one comment.

II. What is Being Addressed in this Document?

The EPA is approving the infrastructure SIP submission received from the State on April 11, 2019, in accordance with section 110(a)(1) of the CAA. Specifically, the EPA is approving the following infrastructure elements of section 110(a)(2) of the CAA: (A) through (C), (D)(i)(II)- prevention of significant deterioration of air quality (prong 3) and protection of visibility (prong 4), (D)(ii), (E) through (H), and (J) through

¹ 51.152(d)(1) allows the Administrator to exempt portions of a Priority I, IA, or II AQCR which have been designated as attainment or unclassifiable for national primary and secondary standards under section 107 of the Act from the requirement to have a contingency plan.

(M). Elements of section 110(a)(2)(D)(i)(I) - significant contribution to nonattainment (prong 1) and interfering with maintenance of the NAAQs (prong 2) were addressed in a separate SIP submission and are not addressed in this document. Section 110(a)(2)(I) was also not addressed in the submission, however, the EPA does not expect infrastructure SIP submissions to address element (I). Section 110(a)(2)(I) requires states to meet the applicable SIP requirements of part D of the CAA relating to designated nonattainment areas. The specific part D submissions for designated nonattainment areas are subject to different submission schedules than those for section 110 infrastructure elements. The EPA will act on part D attainment plan SIP submissions through a separate rulemaking governed by the requirements for nonattainment areas, as described in part D.

The EPA is also approving a request from the State to exempt all counties in the Kansas City AQCR, and Jefferson and Franklin (except Bowles Township) counties in the St. Louis AQCR, from needing to meet the requirement to have an ozone contingency plan found in at 40 CFR part 51, subpart H.

A technical support document (TSD) is included as part of the docket to this action and it includes an analysis of how the EPA determined that the submission met the applicable 110(a)(1) and (2) requirements for infrastructure SIPs and the criteria

for an exemption from needing an ozone contingency plan for all counties in the Kansas City AQCR, and for Jefferson and Franklin (except Bowles Township) counties in the St. Louis AQCR. A detailed discussion of the submission was provided in the EPA's June 25, 2019, **Federal Register** document. See 84 FR 29826.

III. Have the Requirements for Approval of a SIP Revision Been Met?

The submission has met the public notice requirements of 40 CFR 51.102. The submission also satisfied the completeness criteria of 40 CFR part 51, appendix V. The State provided a public comment period for the submission from December 31, 2018, to February 7, 2019, and held a public hearing on January 31, 2019. The State received comments from the EPA during the public comment period; the EPA was the only commenter. The State addressed the EPA's comments. As explained in more detail in the TSD, the submission meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

IV. What is the EPA's Response to Comment Received?

The public comment period for the EPA's proposed action opened the date of its publication in the **Federal Register**, June 25, 2019, and closed on July 25, 2019. During this period, the EPA received one comment.

Comment: The commenter asked the EPA to clarify what it is exempting, stating that the proposed exemption was for emergency

episode planning requirements but that EPA seemed to be proposing to eliminate contingency measures required by nonattainment area planning.

Response: The EPA proposed to approve elements of a SIP revision submission addressing the applicable requirements of section 110 of the CAA for the 2015 O₃ NAAQS, commonly referred to an "infrastructure" SIP, and to approve a request to exempt all counties in the Kansas City AQCR and all of Jefferson and most of Franklin (except Boles Township) counties in the St. Louis AQCR from needing an ozone contingency plan meeting the requirements of 40 CFR part 51, subpart H (please see the technical support document, provided in the docket to this rulemaking, and notice of proposed rulemaking, for the EPA's rational for approving the exemption request).

Although it is not clear from the comment, the EPA believes the commenter may have confused the CAA part A 110(a)(2) infrastructure planning requirement to have a contingency plan addressing emergency episodes (element (G)) with the CAA part D 172(c)(9) nonattainment planning requirements to have contingency measures to be undertaken if the area fails to make reasonable further progress, or to attain the NAAQS by the attainment date.

40 CFR part 51, subpart H, includes criteria for classification of areas into AQCRs based on ambient air

concentrations of the pollutant being addressed. If an AQCR is classified as a Priority I, IA, or II region for a specified pollutant, then the infrastructure SIP (under element (G)) should contain an emergency contingency plan meeting the specific requirements of 40 CFR 51.151 and 51.152, as appropriate, with respect to that pollutant. The priority classifications for the AQCRs in Missouri can be found at 40 CFR 52.1321.

There is a possibility for all or just some of the counties in an AQCR to also be designated as nonattainment of a NAAQS; an AQCR boundary is not always equivalent to a nonattainment boundary. Nonattainment area designations in Missouri can be found at 40 CFR 81.326. Areas that are designated as nonattainment must fulfill CAA part D requirements. The proposal notice stated that although infrastructure element (I) requires states to meet the applicable part D SIP requirements (related to designated nonattainment areas), because the specific part D section 172 SIP submissions are subject to different submission schedules than those for part A section 110 infrastructure elements, the EPA will act on part D attainment plan SIP submissions through a separate rulemaking governed by the requirements for nonattainment areas, as described in part D.

To be clear the EPA proposed an exemption from 110(a)(2)(G) emergency contingency planning obligations for the named AQCRs.

The EPA did not propose to exempt the State from meeting part D section 172 contingency measure requirements (110(a)(2)(I)).

V. What Action is the EPA Taking?

The EPA is approving the April 11, 2019, SIP submission addressing the infrastructure elements for the 2015 O₃ NAAQS. Specifically, the EPA is approving the following infrastructure elements of section 110(a)(2): (A) through (C), (D)(i)(II)-prong 3 and prong 4, (D)(ii), (E) through (H), and (J) through (M). The EPA is not acting on the elements of section 110(a)(2)(D)(i)(I)-prong 1 and prong 2 because those elements were not addressed in the submission. Section 110(a)(2)(I) was not addressed in the submission and the EPA would not expect it to be.

The EPA is also approving a request from the State to exempt all counties in the Kansas City AQCR, and Jefferson and Franklin (except Bowles Township) counties in the St. Louis AQCR, from needing to meet the requirement to have an ozone contingency plan found in at 40 CFR Part 51, subpart H.

VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to

approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866.
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of the National Technology Transfer and Advancement Act (NTTA) because this rulemaking does not involve technical standards; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take

effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[insert date 60 days after date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Air quality control region, Contingency plan, Exemption,

Incorporation by reference, Infrastructure, Intergovernmental relations, Ozone.

Dated: _____

September 18, 2019.

James Gulliford,
Regional Administrator,
Region 7.

For the reasons stated in the preamble, the EPA amends 40 CFR part 52 as set forth below:

PART 52--APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart-AA Missouri

2. In §52.1320, the table in paragraph (e) is amended by adding entry "(78)" in numerical order to read as follows:

§52.1320 Identification of plan.

* * * * *

(e) ***

EPA-APPROVED MISSOURI NONREGULATORY SIP PROVISIONS

Name of non-regulatory SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Explanation
* * * * *				
(78) Sections 110 (a) (1) and 110(a) (2) Infrastructure Requirements for the 2015 Ozone NAAQS. Ozone Contingency Plan Exemptions.	Statewide	4/11/2019	[insert date of publication in the Federal Register], [insert Federal Register citation]	<p>This action approves the following CAA elements: 110(a) (1) and 110(a) (2) (A), (B), (C), (D) (i) (II) - prongs 3 and 4, (D) (ii), (E), (F), (G), (H), (J), (K), (L), and (M). 110(a) (2) (D) (i) (I) - prongs 1 and 2 were not included in the submission. 110(a) (2) (I) is not applicable.</p> <p>This action approves the ozone contingency plan exemptions for all counties in the Kansas City AQCR and Jefferson and Franklin (except Bowles Township) counties in the St. Louis AQCR.</p> <p>[EPA-R07-OAR-2019-0334; FRL-1000-15-Region 7].</p>

[FR Doc. 2019-20671 Filed: 9/27/2019 8:45 am; Publication Date: 9/30/2019]